******

In the High Court of Punjab and Haryana at Chandigarh.

C.W.P. No.6680 of 2005.

Date of decision : 3.5.2007.

S.C.Kapuria ...Petitioner.

vs.

Punjab State Electricity Board and others ...Respondents.

Coram: **Hon'ble Mr. Justice M.M.Kumar.**

Hon'ble Mr. Justice Rajesh Bindal.

Present: Mr.Sanjeev Sharma,Advocate,for the petitioner.
Mr.H.S.Sran,Advocate,for respondents no.1 and 2.
Mr.Amol Rattan Singh ,Additional Advocate General, Punjab, for respondent no.3.

Rajesh Bindal, J.

The petitioner has approached this court by filing the present petition praying for the quashing of the impugned order dated 17.1.2005 (Annexure P15), whereby the claim of the petitioner for counting his service rendered under the Punjab Government for pensionary benefits was rejected by the respondent- Punjab State Electricity Board (for brevity 'the Board').

Briefly the facts are that the petitioner was selected and appointed as Inspector in the Agriculture Department of the State of Punjab, in the year 1970. He joined his service as such on 6.6.1970. In the year 1978, certain posts of Apprentice Engineer (Mechanical) were advertised by the Board. The petitioner applied for the post through proper channel and was selected vide appointment letter dated 21.7.1978. As per the terms of the appointment, the petitioner was required to submit no objection certificate from the earlier employer. As a consequence of his fresh appointment with the Board, the petitioner resigned from his earlier job on 22.7.1978 giving one month's notice with a request for acceptance of the resignation with effect from 23.8.1978. On a further request of the petitioner for preponing the date of his resignation to enable him to join the Board within the stipulated time, the resignation of the petitioner was accepted

with effect from 7.8.1978, subject to payment of salary for the notice period. On 7.8.1978 without any break, the petitioner submitted his joining report with the Board. After joining his service with the Board, the petitioner vide application dated 17.7.1980, requested for transfer of his amount of GPF, whereupon the Accountant General, Punjab, transferred the amount to the Board on 7.1.1981. The petitioner was due to retire on superannuation on 31.7.2004. Well before that date, vide letter dated 29.1.2002 (Annexure P8), the petitioner requested that the service period of 8 years and 2 months i.e. from 6.6.1970 to 7.8.1978 rendered by him with the Department of Agriculture of the State of Punjab, be counted for computing his qualifying service for grant of pensionary benefits. However, on his retirement, it was found that the service rendered by the petitioner with the Department of Agriculture of the State of Punjab was not counted towards his pensionary benefits. Accordingly the petitioner submitted another request on 8.10.2004 for granting the requisite benefits by treating the whole service as qualifying service for pension etc. However, the claim of the petitioner for counting his service rendered with the State of Punjab, prior to his joining service with the Board, was rejected by the Board vide impugned order dated 17.1.2005 which is subject matter of challenge in this instant petition.

In response to the claim of the petitioner, the Agriculture Officer submitted that the petitioner had resigned from his service at his own will and left the department to join a new service by applying through proper channel and a no objection certificate was also issued to the petitioner. As far as the Board is concerned, it is submitted that as the petitioner had served with the Department of Agriculture of the State of Punjab for the period from 6.6.1970 to 7.8.1978, the liability for making proportionate payment of pension and gratuity rests on the State of Punjab. At the time of entry into the service of the Board, no understanding was given to the petitioner for counting his previous service rendered with the Department of Agriculture of the State of Punjab towards his pensionary benefits. As far as the cases referred by the petitioner in the writ petition, where the past service rendered with the other authority was counted by the Board towards pensionary benefits, it was submitted that in those cases respective contribution was made by the earlier employer, which has not

been done in the present case. Accordingly, it has been pleaded that the cases are distinguishable.

It was in this factual matrix that the issue for consideration before this court is that as to whether the petitioner is entitled to counting of his service rendered with the Department of Agriculture of the State of Punjab before joining with the respondent-Board towards his pensionary benefits.

At the very outset, learned counsel for the petitioner as well as the respondent-Board referred to and relied upon judgment of this court in ***R.P.Singla vs. State of Punjab and another*** 2002 (3) RSJ 504, wherein considering an identical issue with regard to an employee of the Board, who was in service with the State of Punjab before joining with the Board, this court held as under:-

> "*The short point for determination before me is whether the petitioner is entitled to the benefit of previous service for the purpose of retiral/ pensionary benefits and if so, who are liable to pay that benefit and on what terms. The learned senior counsel for the petitioner vehemently submitted that as per instructions Annexure P-15, the previous service performed by the petitioner in the State Government has to be reckoned by respondent No.2 for the purpose of calculating the retiral benefits. He further submitted that the instructions Annexure P-15 have been adopted by the Board vide letter Annexure P-16. Para No.2 of the instructions Annexure P-15 lays down as follows:-*
>
> > *"2. This benefit will be admissible on to the following categories of employees:-*
> >
> > *1) ....*
> >
> > *2) Those who while holding temporary posts under Central/ State Government apply for posts under State /Central*

government through proper channel with proper permission of the administration authority concerned."

These instructions had been adopted as is evident from the document Annexure P-16 and the operative portion of the decision runs as follows:-

The Punjab State Electricity Board have adopted the aforesaid letter of the Govt. and also the instructions expressed along with conditions and the date of its implementation i.e. 31.3.1982."

Thus, there is no manner of doubt that the Board was bound to reckon the previous period of service of the petitioner when he performed his duties in the State Government in order to calculate the retiral / pensionary benefits.

Faced with this difficulty, the learned counsel for respondent No.2 submitted that the Board was liable to reckon the previous service on reciprocal basis between the Board and the State Government. Since there was no reciprocal arrangement, therefore, the Board is not liable to count the benefit of previous service. He submitted in the alternative that even if it is assumed that the Board is liable to pay, still the State is also supposed to discharge its liability for the service rendered by the petitioner from 1960 to 1973.

After considering the rival contentions of the parties, I am of the opinion that the petitioner joined the service of the Board after performing about 13 years service in the Punjab Government and, therefore, that service has to be counted by

the Board on the basis of shared liability and respondent No.1 i.e. the State of Punjab cannot escape from its liability from depositing the pension contribution for the period rendered by the petitioner in the State service.

Resultantly, this writ petition stands allowed and directions are given to respondent No.1 to pay to respondent No.2 the pension contribution towards the service rendered by the petitioner from 20.6.1960 to 21.6.1973 within three months from the receipt of copy of the order and further directions are given to respondent No.2 that in the event of receipt of said amount, they shall count the said period for the purpose of qualifying service and shall prepare a case of revised pension and the revised pension shall be released within three months from the receipt of the share of contribution from the State Government. There shall be no order as to costs."

The aforementioned view has subsequently been followed by this court in ***Er. C.L.Malhotra vs. The State of Punjab and others (****Civil Writ Petition No.11839 of 2000),* decided on 12.7.2001, the petitioner therein was an employee of the Government of India before joining the service of the Board. In ***Sh. Gurbax Singh vs. U.O.I. And others*** *(Civil Writ Petition No.4007 of 1999) and* ***The Sports Authority of India vs. Sh. Gurbax Singh and others*** *(Civil Writ Petition No.10826 of 1999)* decided on 26.5.2000, also similar view was expressed by this court regarding counting of past service and the claim of the employees therein was accepted.

Learned counsel appearing for the respondent-State also could not raise any argument worth consideration to defeat the claim of the petitioner. He also could not dispute the judgments earlier rendered by this court, referred to above.

******

Once this court has already held that in the circumstances an employee is entitled to counting of his past service rendered with the State of Punjab towards his pensionary benefits, there is no reason to deny the same benefits to the petitioner. However, as already directed in the cases referred to above, respondent no.3 herein is directed to pay its contribution towards service rendered by the petitioner with it from 6.6.1970 to 7.8.1978 within a period of three months from the receipt of a copy of this order. On compliance of this direction, the Board is directed to revise the pension of the petitioner accordingly and pay the arrears without any further delay.

The writ petition is disposed of in the manner indicated above.

(Rajesh Bindal)
Judge

3.5.2007. **(M.M.Kumar)**
vs. **Judge.**